

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**  
**2900 Crystal Drive**  
**Arlington, Virginia 22202-3513**

Lykos

Mailed: February 25, 2003

Cancellation No. 92030782

Chaos Holdings, Inc.

v.

Luxottica Leasing S.p.A.,  
assignee of Bausch &  
Lomb, Inc.<sup>1</sup>

Angela Lykos, Interlocutory Attorney

On November 15, 2002, the Board ordered respondent to show cause why judgment should not be entered against it for failure to timely file an answer. Respondent filed a response thereto on December 3, 2002, indicating that on August 5, 2002, respondent had timely filed an answer, and submitted proof thereof. Accordingly, the Board's November 15, 2002 show cause order is hereby vacated.

On December 16, 2002, petitioner filed a motion to suspend the proceeding herein, and counsel for petitioner filed a request to withdrawal as attorneys of record.

Turning first to petitioner's motion to suspend the

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<sup>1</sup> Evidence thereof is recorded in the Assignment Branch of the Trademark Office at reel 2035, Frame 0187.

proceeding, the Board is not in receipt of any brief in opposition to petitioner's motion. Nonetheless, the Board, pursuant to our discretion under Trademark Rule 2.127(a), will not treat petitioner's motion as conceded, but rather will decide the motion on the merits. See TBMP § 502.03. Petitioner has moved to suspend on the grounds that petitioner filed for bankruptcy under Chapter 11 and is unable to continue with the cancellation proceeding at this time.

Where a defendant has filed a petition for bankruptcy, under the automatic stay provisions of the bankruptcy code, the Board will automatically suspend proceedings in a case. However, where the plaintiff has filed a petition for bankruptcy, the automatic stay provisions do not mandate the suspension of the Board proceeding unless there is a counterclaim in the Board proceeding for the cancellation of plaintiff's registration. See TBMP § 510.03(a).

In this case, respondent has asserted no counterclaim against petitioner. In view thereof, petitioner's motion to suspend is denied.

Turning finally to petitioner's attorneys request to withdraw as counsel of record in this case, the request to withdraw as counsel is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40,

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and is accordingly granted. The law firm of Volpe and Koenig, P.C. no longer represents petitioner in this proceeding.

In view of the withdrawal of petitioner's counsel, and in accordance with standard Board practice, proceedings herein are suspended, and petitioner is allowed until thirty (30) days from the mailing date of this order to appoint new counsel, or to file a paper stating that petitioner chooses to represent itself. If petitioner files no response, the Board may issue an order to show cause why default judgment should not be entered against petitioner based on petitioner's apparent loss of interest in the case.

The parties will be notified by the Board when proceedings are resumed, and dates will be rescheduled at the appropriate time.

A copy of this order has been sent to all persons listed below.

cc:

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